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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/11

SPONSOR Wirth LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Citizen Petition For Grand Jury Investigation SB 126

ANALYST Haug

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$5.6 - \$9.8	\$5.5 - \$4.8	\$6.1 – 14.6	Recurring and Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AGO)  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 126 provides the process a petitioner must follow to obtain a citizen’s grand jury, as well as responsibilities of the county clerk to provide forms, set the initiation date of the petition, verifying the signatures on the returned petition and filing a report with the district court as to compliance with the procedures. The bill also sets out the challenges that can be made against the petition.

### FISCAL IMPLICATIONS

According to the AOC:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, court hearings to determine sufficiency of grand jury petitions, challenges to the sufficiency of petitions, the number of additional grand juries to be convened, and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Total impact to the courts depends

on how many additional citizen petitions are filed and found to be sufficient as a result of this bill. AOC is currently working on possible parameters to measure resulting case increase; however, past case filings indicate that the number of these petitions filed is historically minimal.

Grand jury panels carry costs of mileage and per diem juror fees required pursuant to Section 31-6-13 NMSA 1978, plus court monitor costs. In judicial districts like the Second Judicial District that generally have a jury panel available for three months at a time, the fiscal impact is lessened if a judge decides a jury should be convened to consider a citizen petition as opposed to those districts where a jury would have to be convened from scratch. Additional costs for convening a jury include jury orientation and special summons. Assuming a standard 30 minute presentation and deliberation of a petition, the cost of an existing jury panel is approximately \$55/petition, while the cost for a convened jury is approximately \$477/petition.

Based on the AOC's statement that minimal administrative cost is involved in updating statutory changes \$5 thousand dollars is estimated for that purpose in the table above. In addition, the range of cost noted above with respect to additional costs for convening a jury, assuming 10 petitions in a year would add 550 dollars to 4,770 dollars to that estimate. The total is reflected in the table above. Statutory update costs would be non-recurring; additional jury costs would be recurring and would be the amount indicated for FY 13.

## **SIGNIFICANT ISSUES**

According to AODA:

There is one significant issue presented by this bill. SB 126 appears to limit a challenge to a citizen's petition to convene a grand jury to the issues of (1) whether the petition was filed with the district court within 120 days of the date the petition was submitted to the county clerk and (2) whether the petitioner had gathered the requisite number of valid signatures. However, New Mexico case law has recognized a much broader range of potential challenges to a citizen's petition to convene a grand jury. Our Supreme Court has repeatedly held that the district court must determine the facial validity of a petition by examining "if geographical jurisdiction exists, if the applicable statute of limitations has not run, and if the petition sets forth facts upon which a grand jury could determine just what criminal conduct or malfeasance colorably has been committed." See, *Cook v. Smith*, 114 N.M. 41, 45, 834 P.2d 418, 422 (1992); *In District Court of the Second Judicial Dist. v. McKenna*, 118 N.M. 402, 407, 881 P.2d 1387, 1392 (1992); and *Pino v. Rich*, 118 N.M. 426, 882 P.2d 21 (1994). In addition our Supreme Court has held "Our system of justice does not allow the grand jury to be used as a tool by any dissatisfied person or political faction to intimidate or threaten a governing body," *McKenna*, 118 N.M. at 407, 881 P.2d at 1392 ("The grand jury petition is not the proper vehicle for those who simply disagree with the actions of public officials who have exercised the duties and responsibilities of their office.").

SB 126 takes no notices of this existing precedence, and makes no attempt to reconcile its limited scope of review with that recognized by our Supreme Court.

The AGO raises several questions:

Is there a review for legal sufficiency before a citizen's grand jury can be convened? If not, what prevents citizens from signing a petition and convening a grand jury or targeting a person or persons without legal grounds to do so? What protections are afforded the targets of a citizens' grand jury?

The AOC states the additional procedures required by SB 7 may increase the sufficiency of information required to verify that petition signatories are qualified voters in that an address is required. Judge and county clerk time required to verify the qualifications of signers may thereby be reduced from the current provisions that do not require an address, increasing efficiency.

The SOS observes that this bill does not appear to have an impact on the Secretary of State's office but may present significant issues for the county clerks.

### **TECHNICAL ISSUES**

The AGO notes Section 3, Paragraph A does not set a time limit on when an interested person must file a motion challenging the sufficiency and timeliness of the petition.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AODA notes citizens wishing to file a petition to convene a grand jury will lack the specific guidelines set forth in this bill and consequently, will have to follow the general guidelines set forth in Art., II, § 14 of the New Mexico Constitution and existing case law as they have done in the past.

GH/bym